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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,890	11/26/2003	Julian P. Trangsrud	20030331.ORI	2877
23595	7590	08/07/2006	EXAMINER	
NIKOLAI & MERSEREAU, P.A. 900 SECOND AVENUE SOUTH SUITE 820 MINNEAPOLIS, MN 55402			LAUX, JESSICA L	
			ART UNIT	PAPER NUMBER
				3635

DATE MAILED: 08/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/722,890	TRANGSRUD, JULIAN P.	
Examiner	Art Unit		
Jessica Laux	3635		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 17 July 2006.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-11 is/are pending in the application.
4a) Of the above claim(s) 4-11 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-3 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 26 November 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/26/2003.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____.

DETAILED ACTION

Claim Objections

Claim 1 is objected to because of the following informalities: a subcombination is initially claimed, as "cradling a rebar" is claimed only in the functional language (i.e. "a rebar spacer...for cradling a rebar"). However, the claim then recites a combination of the rebar spacer and the rebar (i.e. "with the end having a surface tangent to the rebar surface"), which is inconsistent. The claim is being considered drawn to the subcombination. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Sorkin (6684595).

In regards to claim 1: Sorkin discloses a rebar spacer (130; Figure 8) comprising, a clip (136) having a bottom portion with a "U" shaped rebar receiving portion (138) approximating the diameter of a rebar (where rebar diameters range from .375 inches for a #3 to 2.257 inches for a #18 rebar), that is capable of cradling a rebar,

a pair of columns (140) on either side of the "U" shaped rebar receiving portion and extending upward therefrom (Col. 7, lines 66-67), a cross portion (142 and 144) on each column extending toward the opposing column (Col. 7, line 67 – Col. 8, line 4), an arm (146 and 148) extending angularly downward from the cross portion toward the center of the "U" shaped rebar receiving portion and having an end at a height approximately the diameter of a rebar above the opposing wall of the "U" shaped rebar receiving portion, with the end having a surface capable of being tangent to a rebar surface (where rebar diameters have a large range from very small diameters to very large diameters, and the end surface would be tangent to a rebar surface of a select size of rebar diameters), to prevent the rebar from being removed from the "U" shaped rebar receiving portion, a base (132 and 134) portion attached to the base of the clip for supporting the clip at a desired height. Further, examiner points out that the limitation in the claim "to prevent the rebar from being removed from the "U" shaped rebar receiving portion..." is a capability statement in an article claim and is therefore not given patentable consideration. The prior art anticipates the claimed limitations when the reference is capable of performing the claimed function. As Sorkin is capable of prevent the rebar from being removed the claimed limitations are anticipated by Sorkin.

In regards to claim 2: The rebar spacer as in claim 1 above, wherein the base portion has a flat base (132), a left wall (Figure 8) extending from the flat base to the bottom of the clip and center wall (Figure 8) extending from the base to the bottom of the clip and a right wall (Figure 8) extending from the flat base to the bottom of the clip.

In regards to claim 3: The rebar spacer as in claim 2 above, wherein the left and right walls are slanted inward from the edge of the flat base to the sides of the clip (Figure 8), and the center wall is perpendicular to the flat base and the base of the clip (Figure 8).

Response to Arguments

Applicant argues that Sorkin does not disclose a rebar chair having arms with an end that would be tangent the surface of a rebar disposed within, for engaging the top of the rebar in the cradle so that the rebar can't push the arms aside, resulting in the rebar being removed from the cradle. Examiner disagrees with applicant's arguments. Sorkin discloses arms (elements 146 and 148), which have an end surface that would be tangent to a rebar surface of certain rebar diameters, therefore engaging the top of the rebar in the cradle so that the rebar can't push the arms aside and be removed from the cradle. Examiner notes that rebar comes in a wide range of diameters, from .375 inch to 2.257 inches, and therefore the arms as disclosed by Sorkin are capable of having an end surface tangent to a rebar surface in the case where certain diameters of rebar are used. As such applicant's invention fails to distinguish over Sorkin.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Friday, 8:30am to 4:00pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack can be reached on 571-272-6848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JL
07/28/2006


N. Slack
Supervisory Patent Examiner